

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1343 Review by commissioner of ordinary shareholder dividends paid by domestic insurers; determination of reasonableness; factors; limiting or disallowing payment of shareholder dividends; declaration or payment from earned surplus; domestic insurer as member of insurance holding company system; extraordinary distribution to shareholders; hearing.

Sec. 1343. (1) Each year the commissioner shall review the ordinary shareholder dividends paid by domestic insurers to determine whether each insurer's surplus following those dividends is reasonable in relation to the insurer's outstanding liabilities and adequate to its needs so that it continues to comply with section 403. In conducting the review and making the determination, the commissioner shall consider the following factors in addition to the provisions of section 436a:

(a) The adequacy of the level of surplus as regards policyholders remaining after the dividend payment or payments.

(b) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items, such as surplus relief reinsurance transactions and reserve destrengthening.

(c) The quality and liquidity of investments in subsidiaries. The commissioner may discount any of those investments or refuse to consider the investment as an asset for purposes of determining the adequacy of surplus as regards policyholders if the investment so warrants.

(2) If the commissioner determines that an insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the commissioner shall limit or disallow the payment of shareholder dividends.

(3) Shareholder dividends shall be declared or paid only from earned surplus, unless the commissioner approves the dividend prior to payment. The commissioner shall consider whether the dividend will be paid from the insurer's net gain from operations if the insurer is a life insurer, or the insurer's net income if the insurer is not a life insurer, for the 12-month period ending December 31 of the immediately preceding year. For purposes of this subsection, earned surplus excludes surplus arising from unrealized capital gains or a revaluation of assets.

(4) Any domestic insurer that is a member of an insurance holding company system and declares a shareholder dividend shall report the dividend to the commissioner within 5 business days after declaring the dividend and at least 10 business days beginning from the date of receipt by the commissioner before the payment.

(5) An insurer subject to registration under section 1324 shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration and has not disapproved or has approved the payment within that period. If the commissioner, applying the criteria in subsection (1), determines that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and is not adequate to its financial needs so that the insurer will not continue to comply with section 403, the commissioner may, prior to the expiration of the 30-day period described in this subsection, enter an order prohibiting the payment of the dividend.

(6) An extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of 10% of the insurer's surplus as regards policyholders as of December 31 of the immediately preceding year, or the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending December 31 of the immediately preceding year but shall not include pro rata distributions of any class of the insurer's own securities.

(7) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration shall confer no rights upon shareholders until the commissioner has approved or has not disapproved the payment of the dividend or distribution within the 30-day period.

(8) Notwithstanding subsections (5) through (7), a dividend shall not be declared and paid by an insurer to an affiliate if after the payment the insurer could not satisfy the standards set forth in section 403.

(9) An insurer aggrieved by the commissioner's determination or order under this section is entitled to a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to be held no later than 10 days

after receipt of the insurer's request. The commissioner's determination or order shall remain in effect except as modified by the commissioner during the pendency of the hearing and until a final decision by the commissioner. The commissioner shall render a final decision within 30 days after the conclusion of the hearing.

History: Add. 1970, Act 136, Imd. Eff. July 29, 1970;—Am. 1992, Act 182, Imd. Eff. Oct. 1, 1992;—Am. 1994, Act 227, Imd. Eff. June 27, 1994;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995;—Am. 1995, Act 219, Imd. Eff. Dec. 1, 1995.

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